

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 363
95TH GENERAL ASSEMBLY

Reported from the Committee on Jobs, Economic Development and Local Government, March 12, 2009, with recommendation that the Senate Committee Substitute do pass.

1862S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 32.063, 136.055, 144.025, 144.060, 144.070, 144.080, 144.100, and 144.130, RSMo, and to enact in lieu thereof ten new sections relating to motor vehicle sales taxes, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 32.063, 136.055, 144.025, 144.060, 144.070, 144.080, 2 144.100, and 144.130, RSMo, are repealed and ten new sections enacted in lieu 3 thereof, to be known as sections 32.063, 32.095, 136.055, 144.025, 144.060, 4 144.070, 144.080, 144.100, 144.130, and 144.145, to read as follows:

32.063. 1. The director of revenue[, his] **and the director's** employees 2 or agents may accept credit cards in payment of taxes and fees. The type of 3 credit cards accepted shall be at the discretion of the director.

4 2. In addition to other fees provided by law, the director of revenue **and** 5 **the director's employees or agents** may set a fee to be added to each credit 6 card transaction equal to the charge paid by the state or the taxpayer for the use 7 of the credit card by the taxpayer. No other fees shall be imposed other than 8 those herein authorized.

32.095. Beginning January 1, 2012, the director of the department 2 **of revenue may select or appoint any motor vehicle dealer, as such** 3 **terms are defined in chapter 301, RSMo, to act as an agent of the** 4 **department of revenue for the purpose of registering and licensing of** 5 **motor vehicles and trailers under chapter 301, RSMo, and collecting** 6 **motor vehicle sales and use taxes under sections 136.055, 144.070, and** 7 **144.440, RSMo. Such motor vehicle dealers shall only act as an agent**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

8 **under this section for an initial sale or lease of a motor vehicle and**
9 **trailer, but shall not act as an agent under this section for any**
10 **subsequent registration under chapter 301 or 306, RSMo.**

136.055. 1. Any person who is selected or appointed by the state director
2 of revenue to act as an agent of the department of revenue, whose duties shall be
3 the sale of motor vehicle licenses and the collection of motor vehicle sales and use
4 taxes **when required** under [the provisions of section] **sections 144.070 and**
5 **144.440, RSMo,** and who receives no salary from the department of revenue, shall
6 be authorized to collect from the party requiring such services additional fees as
7 compensation in full and for all services rendered on the following basis:

8 (1) For each motor vehicle or trailer license sold, renewed or
9 transferred--two dollars and fifty cents beginning January 1, 1998; and four
10 dollars beginning July 1, 2000; and five dollars beginning August 28, 2002, for
11 those licenses biennially renewed pursuant to section 301.147, RSMo. Beginning
12 July 1, 2003, for each motor vehicle or trailer license sold, renewed or
13 transferred--three dollars and fifty cents and seven dollars for those licenses sold
14 or biennially renewed pursuant to section 301.147, RSMo;

15 (2) For each application or transfer of title--two dollars and fifty cents
16 beginning January 1, 1998;

17 (3) For each instruction permit, nondriver license, chauffeur's, operator's
18 or driver's license issued for a period of three years or less--two dollars and fifty
19 cents and five dollars for licenses or instruction permits issued or renewed for a
20 period exceeding three years;

21 (4) For each notice of lien processed--two dollars and fifty cents beginning
22 August 28, 2000;

23 (5) No notary fee or other fee or additional charge shall be paid or
24 collected except for electronic telephone transmission reception--two dollars.

25 2. All fees charged shall not exceed those in this section. Beginning July
26 1, 2003, the fees imposed by this section shall be collected by all permanent
27 branch offices and all full-time or temporary offices maintained by the
28 department of revenue.

29 3. Any person acting as agent of the department of revenue for the sale
30 and issuance of licenses and other documents related to motor vehicles shall have
31 an insurable interest in all license plates, licenses, tabs, forms and other
32 documents held on behalf of the department.

33 4. The fee increases authorized by this section and approved by the

34 general assembly were requested by the fee agents. All fee agent offices,
35 **excluding motor vehicle dealers acting as agents of the department of**
36 **revenue under section 32.095, RSMo**, shall display a three foot by four foot
37 sign with black letters of at least three inches in height on a white background
38 which states:

39 The increased fees approved by the Missouri Legislature and
40 charged by this fee office were requested by the fee agents.

144.025. 1. Notwithstanding any other provisions of law to the contrary,
2 in any retail sale other than retail sales governed by subsections 4 and 5 of this
3 section, where any article on which sales or use tax has been paid, credited, or
4 otherwise satisfied or which was exempted or excluded from sales or use tax is
5 taken in trade as a credit or part payment on the purchase price of the article
6 being sold, the tax imposed by sections 144.020 and 144.440 shall be computed
7 only on that portion of the purchase price which exceeds the actual allowance
8 made for the article traded in or exchanged, if there is a bill of sale or other
9 record showing the actual allowance made for the article traded in or
10 exchanged. Where the purchaser of a motor vehicle, trailer, boat or outboard
11 motor receives a rebate from the seller or manufacturer, the tax imposed by
12 sections 144.020 and 144.440 shall be computed only on that portion of the
13 purchase price which exceeds the amount of the rebate, if there is a bill of sale
14 or other record showing the actual rebate given by the seller or
15 manufacturer. Where the trade-in or exchange allowance plus any applicable
16 rebate exceeds the purchase price of the purchased article there shall be no sales
17 or use tax owed. This section shall also apply to motor vehicles, trailers, boats,
18 and outboard motors sold by the owner or holder of the properly assigned
19 certificate of ownership if the seller purchases or contracts to purchase a
20 subsequent motor vehicle, trailer, boat, or outboard motor within one hundred
21 eighty days before or after the date of the sale of the original article and a bill of
22 sale showing the paid sale price is presented to the department of revenue at the
23 time of licensing. **Notwithstanding the paid sale price presented, the**
24 **director of the department of revenue shall impose the tax computed**
25 **on the sale price of no less than eighty percent of the value of the**
26 **subsequent motor vehicle or trailer. As used in this subsection, the**
27 **term "value" means the average trade-in value as evidenced by the**
28 **current volume of the National Automobile Dealers Association's**
29 **Official Used Car Guide, Central Edition, at the time of sale.** A copy of

30 the bill of sale shall be left with the licensing office. Where the subsequent motor
31 vehicle, trailer, boat, or outboard motor is titled more than one hundred eighty
32 days after the sale of the original motor vehicle, trailer, boat, or outboard motor,
33 the allowance pursuant to this section shall be made if the person titling such
34 article establishes that the purchase or contract to purchase was finalized prior
35 to the expiration of the one hundred eighty-day period.

36 2. As used in this section, the term "boat" includes all motorboats and
37 vessels, as the terms "motorboat" and "vessel" are defined in section 306.010,
38 RSMo.

39 3. As used in this section, the term "motor vehicle" includes motor
40 vehicles as defined in section 301.010, RSMo, recreational vehicles as defined in
41 section 700.010, RSMo, or a combination of a truck as defined in section 301.010,
42 RSMo, and a trailer as defined in section 301.010, RSMo.

43 4. The provisions of subsection 1 of this section shall not apply to retail
44 sales of manufactured homes in which the purchaser receives a document known
45 as the "Manufacturer's Statement of Origin" for purposes of obtaining a title to
46 the manufactured home from the department of revenue of this state or from the
47 appropriate agency or officer of any other state.

48 5. Any purchaser of a motor vehicle or trailer used for agricultural use by
49 the purchaser shall be allowed to use as an allowance to offset the sales and use
50 tax liability towards the purchase of the motor vehicle or trailer any grain or
51 livestock produced or raised by the purchaser. The director of revenue may
52 prescribe forms for compliance with this subsection.

144.060. It shall be the duty of every person making any purchase or
2 receiving any service upon which a tax is imposed by sections 144.010 to 144.510
3 to pay, to the extent possible under the provisions of section 144.285, the amount
4 of such tax to the person making such sale or rendering such service[;]. Any
5 person who shall willfully and intentionally refuse to pay such tax shall be guilty
6 of a misdemeanor[; provided, however, that]. The provisions of this section shall
7 not apply to any person making any purchase or sale of a motor vehicle subject
8 to sales tax as provided by the Missouri sales tax law, **unless such person**
9 **making the sale is a motor vehicle dealer acting as an agent of the**
10 **department of revenue under section 32.095, RSMo.**

144.070. 1. At the time the owner of any new or used motor vehicle,
2 trailer, boat, or outboard motor which was acquired in a transaction subject to
3 sales tax under the Missouri sales tax law makes application to the director of

4 revenue for an official certificate of title and the registration of the [automobile]
5 **motor vehicle**, trailer, boat, or outboard motor as otherwise provided by law,
6 [he] **the owner** shall present to the director of revenue evidence satisfactory to
7 the director of revenue showing the purchase price exclusive of any charge
8 incident to the extension of credit paid by or charged to the applicant in the
9 acquisition of the motor vehicle, trailer, boat, or outboard motor, or that no sales
10 tax was incurred in its acquisition, and if sales tax was incurred in its
11 acquisition, the applicant shall pay or cause to be paid to the director of revenue
12 the sales tax provided by the Missouri sales tax law in addition to the
13 registration fees now or hereafter required according to law, and the director of
14 revenue shall not issue a certificate of title for any new or used motor vehicle,
15 trailer, boat, or outboard motor subject to sales tax as provided in the Missouri
16 sales tax law until the tax levied for the sale of the same under sections 144.010
17 to 144.510 has been paid as [herein] provided **in this section** or is registered
18 under the provisions of subsection 5 of this section.

19 2. As used [above] **in subsection 1 of this section**, the term "purchase
20 price" shall mean [the total amount of the contract price agreed upon between the
21 seller and the applicant in the acquisition] **not less than eighty percent of**
22 **the value** of the motor vehicle, trailer, boat, or outboard motor[, regardless of the
23 medium of payment therefor] **for all nonretail transactions. For retail**
24 **transactions, "purchase price" means the total amount of the contract**
25 **price agreed upon between the seller and the applicant in the**
26 **acquisition.**

27 3. In the event that the purchase price is unknown or undisclosed, or that
28 the evidence thereof is not satisfactory to the director of revenue, the same shall
29 be fixed by appraisal by the director.

30 4. The director of the department of revenue shall endorse upon the
31 official certificate of title issued by [him] **the director** upon such application an
32 entry showing that such sales tax has been paid or that the **motor** vehicle,
33 trailer, boat, or outboard motor represented by such certificate is exempt from
34 sales tax and state the ground for such exemption.

35 5. Any person, company, or corporation engaged in the business of renting
36 or leasing motor vehicles, trailers, boats, or outboard motors, which are to be used
37 exclusively for rental or lease purposes, and not for resale, may apply to the
38 director of revenue for authority to operate as a leasing company. Any company
39 approved by the director of revenue may pay the tax due on any motor vehicle,

40 trailer, boat, or outboard motor as required in section 144.020 at the time of
41 registration thereof or in lieu thereof may pay a sales tax as provided in sections
42 144.010, 144.020, 144.070 and 144.440. A sales tax shall be charged to and paid
43 by a leasing company which does not exercise the option of paying in accordance
44 with section 144.020, on the amount charged for each rental or lease agreement
45 while the motor vehicle, trailer, boat, or outboard motor is domiciled in this
46 state. Any motor vehicle, boat, or outboard motor which is leased as the result
47 of a contract executed in this state shall be presumed to be domiciled in this
48 state.

49 6. Any corporation may have one or more of its divisions separately apply
50 to the director of revenue for authorization to operate as a leasing company,
51 provided that the corporation:

52 (1) Has filed a written consent with the director authorizing any of its
53 divisions to apply for such authority;

54 (2) Is authorized to do business in Missouri;

55 (3) Has agreed to treat any sale of a motor vehicle, trailer, boat, or
56 outboard motor from one of its divisions to another of its divisions as a sale at
57 retail within the meaning of subdivision (9) of subsection 1 of section 144.010;

58 (4) Has registered under the fictitious name provisions of sections 417.200
59 to 417.230, RSMo, each of its divisions doing business in Missouri as a leasing
60 company; and

61 (5) Operates each of its divisions on a basis separate from each of its other
62 divisions.

63 However, when the transfer of a motor vehicle, trailer, boat or outboard motor
64 occurs within a corporation which holds a license to operate as a motor vehicle
65 or boat dealer pursuant to sections 301.550 to [301.575] **301.573**, RSMo, the
66 provisions in subdivision (3) of this subsection shall not apply.

67 7. If the owner of any motor vehicle, trailer, boat, or outboard motor
68 desires to charge and collect sales tax as provided [hereinabove] **in this section**,
69 **[he] the owner** shall make application to the director of revenue for a permit to
70 operate as a motor vehicle, trailer, boat, or outboard motor leasing company. The
71 director of revenue shall promulgate rules and regulations determining the
72 qualifications of such a company, and the method of collection and reporting of
73 sales tax charged and collected. Such regulations shall apply only to owners of
74 motor vehicles, trailers, boats, or outboard motors, electing to qualify as motor
75 vehicle, trailer, boat, or outboard motor leasing companies under the provisions

76 of subsection 5 of this section, and no motor vehicle renting or leasing, trailer
77 renting or leasing, or boat or outboard motor renting or leasing company can come
78 under sections 144.010, 144.020, 144.070 and 144.440 unless all **motor** vehicles,
79 trailers, boats, and outboard motors held for renting and leasing are included.

144.080. 1. Every person receiving any payment or consideration upon
2 the sale of property or rendering of service, subject to the tax imposed by the
3 provisions of sections 144.010 to 144.525, is exercising the taxable privilege of
4 selling the property or rendering the service at retail and is subject to the tax
5 levied in section 144.020. The person shall be responsible not only for the
6 collection of the amount of the tax imposed on the sale or service to the extent
7 possible under the provisions of section 144.285, but shall, on or before the last
8 day of the month following each calendar quarterly period of three months, file
9 a return with the director of revenue showing the person's gross receipts and the
10 amount of tax levied in section 144.020 for the preceding quarter, and shall remit
11 to the director of revenue, with the return, the taxes levied in section 144.020,
12 except as provided in subsections 2 and 3 of this section. The director of revenue
13 may promulgate rules or regulations changing the filing and payment
14 requirements of sellers, but shall not require any seller to file and pay more
15 frequently than required in this section.

16 2. **(1)** Where the aggregate amount levied and imposed upon a seller by
17 section 144.020 is in excess of two hundred and fifty dollars for either the first or
18 second month of a calendar quarter, the seller shall file a return and pay such
19 aggregate amount for such months to the director of revenue by the twentieth day
20 of the succeeding month;

21 **(2)** Beginning January 1, 2012, timely remittance of such
22 aggregate amount shall be determined under this subdivision. Failure
23 of a seller to remit such aggregate amount timely shall result in a one
24 thousand dollar late or insufficiency penalty. Failure of a seller to
25 remit such aggregate amount plus penalty within ten business days of
26 the original due date in this subsection, or in the case of a subsequent
27 insufficiency or untimely remittance within any twelve-month period,
28 shall result in a five thousand dollar penalty. Failure of a seller to
29 remit such aggregate amount plus penalty within twenty business days
30 or the original due date in this subsection, or in the case of a third
31 insufficiency or untimely remittance within any twelve-month period,
32 shall result in a ten thousand dollar penalty. Failure of a seller to

33 remit such aggregate amount plus penalty within thirty business days
34 of the original due date in this subsection, or in the case of a fourth
35 insufficiency or untimely remittance within any twelve-month period,
36 shall result in the suspension or revocation of any and all specific
37 licenses required to conduct business in this state until such time as all
38 remittance and penalties, including any reinstatement fees, have been
39 fully satisfied. Any seller causing the department of revenue to
40 exercise suspension or revocation of any business license required by
41 this state a second time shall forfeit the seller's specific license to
42 transact business in this state indefinitely. The department of revenue
43 may electronically survey all motor vehicle dealer accounts to
44 determine if any sales tax payments on the purchase of motor vehicles
45 or trailers have not been timely remitted.

46 3. Where the aggregate amount levied and imposed upon a seller by
47 section 144.020 is less than forty-five dollars in a calendar quarter, the director
48 of revenue shall by regulation permit the seller to file a return for a calendar
49 year. The return shall be filed and the taxes paid on or before January
50 thirty-first of the succeeding year. **Beginning January 1, 2012, the**
51 **department of revenue shall issue a credit on the succeeding quarterly**
52 **required remittance and return to a seller any amounts remitted for**
53 **satisfying and returning any tax obligation on behalf of a purchaser**
54 **causing a credit card reversal or presenting insufficient monetary**
55 **instruments for the tax imposed by section 144.020.**

56 4. The seller of any property or person rendering any service, subject to
57 the tax imposed by sections 144.010 to 144.525, shall collect the tax from the
58 purchaser of such property or the recipient of the service to the extent possible
59 under the provisions of section 144.285, but the seller's inability to collect any
60 part or all of the tax does not relieve the seller of the obligation to pay to the
61 state the tax imposed by section 144.020; except that the collection of the tax
62 imposed by sections 144.010 to 144.525 on motor vehicles and trailers shall be
63 made as provided in sections 144.070 and 144.440.

64 5. It shall be unlawful for any person to advertise or hold out or state to
65 the public or to any customer directly or indirectly that the tax or any part
66 thereof imposed by sections 144.010 to 144.525, and required to be collected by
67 the person, will be assumed or absorbed by the person, or that it will not be
68 separately stated and added to the selling price of the property sold or service

69 rendered, or if added, that it or any part thereof will be refunded. Any person
70 violating any of the provisions of this section shall be guilty of a misdemeanor.

144.100. 1. **On or before January 1, 2012**, every person making any
2 taxable sales of property or service, except transactions provided for in sections
3 144.070 and 144.440, individually or by duly authorized officer or agent, shall
4 make and file a written return with the director of revenue in such manner as
5 **[he] the director** may prescribe. **Beginning January 1, 2012, every person**
6 **making any taxable sales of property or service, individually or by duly**
7 **authorized officer or agent, shall make and file a written return with**
8 **the director of revenue in such manner as the director may prescribe.**

9 2. The returns shall be on blanks designed and furnished by the director
10 of the department of revenue and shall be filed at the times provided in sections
11 144.080 and 144.090. The returns shall show the amount of gross receipts from
12 sales of taxable property and services by the person and the amount of tax due
13 thereon by that person during and for the period covered by the return. With
14 each return, the person shall remit to the director of revenue the full amount of
15 the tax due.

16 3. In case of charge and time sales the gross receipts thereof shall be
17 included as sales in the returns as and when payments are received by the
18 person, without any deduction therefrom whatsoever.

19 4. If an error or omission is discovered in a return or a change be
20 necessary to show the true facts, the error may be corrected, the omission
21 supplied, or the change made in the return next filed with the director for the
22 filing period immediately following the filing period in which the error was made
23 or the omission occurred, as prescribed by law, except that no refund under this
24 chapter shall be allowed for any amount of tax paid by a seller which is based
25 upon charges incident to credit card discounts. Any other omission or error
26 **[must] shall** be corrected by filing an amended return for the erroneously
27 reported period if the amount of tax is less than that originally reported, or an
28 additional return if the amount of tax is greater than that originally reported. An
29 additional return shall be deemed filed on the date the envelope in which it is
30 mailed is postmarked or the date it is received by the director, whichever is
31 earlier. Any payment of tax, interest, penalty or additions to tax shall be deemed
32 filed on the date the envelope containing the payment is postmarked or the date
33 the payment is received by the director, whichever is earlier. If a refund or credit
34 results from the filing of an amended return, no refund or credit shall be allowed

35 unless an application for refund or credit is properly completed and submitted to
36 the director pursuant to section 144.190.

37 5. The amount of gross receipts from sales and the amount of tax due
38 returned by the person, as well as all matters contained in the return, is subject
39 to review and revision in the manner herein provided for the correction of the
40 returns.

144.130. Refunds made by the person during the preceding calendar
2 month or calendar quarter, **or in the case of a motor vehicle purchase, then**
3 **during the preceding twenty-four month calendar**, to purchasers, on
4 account of tangible personal property, substances, services [and], things, **and**
5 **motor vehicles** returned to the persons shall be allowed as a deduction from the
6 gross receipts required to be stated in the returns filed with the director of
7 revenue; provided, the person had theretofore included [the said] **such** refunded
8 receipts in a return made by such person and had paid the amount imposed by
9 sections 144.010 to 144.510 with respect thereto; provided, the seller has returned
10 to the purchaser any and all tax previously paid by the purchaser at the time of
11 the purchase. **However, when the seller is a dealer as defined in section**
12 **301.010, RSMo, or when the sale is financed by a financial institution**
13 **as defined in section 404.007, RSMo, and the tangible personal property,**
14 **substances, services, things, or motor vehicle is repossessed, the**
15 **provision of this section requiring that the seller has returned to the**
16 **purchaser any and all tax previously paid by the purchaser at the time**
17 **of the purchase does not apply.**

144.145. Beginning January 1, 2012, any person licensed by the
2 director of revenue under chapter 301, RSMo, as a motor vehicle dealer
3 may collect and remit sales and use tax under the provisions of this
4 chapter, at the time of sale on all motor vehicles or trailers sold by the
5 licensed dealership. Such person shall receive no salary from the
6 department of revenue, but shall be allowed to retain any amount
7 authorized by section 144.140. The director of revenue may promulgate
8 rules to administer the provisions of this section. Any rule or portion
9 of a rule, as that term is defined in section 536.010, RSMo, that is
10 created under the authority delegated in this section shall become
11 effective only if it complies with and is subject to all of the provisions
12 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
13 section and chapter 536, RSMo, are nonseverable and if any of the

14 **powers vested with the general assembly under chapter 536, RSMo, to**
15 **review, to delay the effective date, or to disapprove and annul a rule**
16 **are subsequently held unconstitutional, then the grant of rulemaking**
17 **authority and any rule proposed or adopted after August 28, 2009, shall**
18 **be invalid and void.**

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Bill

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